FH

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[redacted]

DECISION

MDD/141052

PRELIMINARY RECITALS

Pursuant to a petition filed March 26, 2012, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Racine County Department of Human Services in regard to Medical Assistance, a hearing was held on September 18, 2012, at Racine, Wisconsin.

The issue for determination is whether the Disability Determination Bureau (DDB) correctly denied the Petitioner's application for Medical Assistance (MA).

There appeared at that time and place the following persons:

PARTIES IN INTEREST:
Petitioner:

[redacted]

Respondent:

Department of Health Services
1 West Wilson Street
Madison, Wisconsin 53703
By: No Appearance, submission of medical file

ADMINISTRATIVE LAW JUDGE:
David D. Fleming
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner is a resident of Racine County.
2. Petitioner filed an application for elderly, blind or disabled Medicaid (MA) with the local agency in late November 2011 alleging disability. The application was forwarded to the Disability Determination Bureau (DDB).
3. The DDB found that Petitioner was not disabled as the Medicaid program uses that term. A denial letter dated on March 21, 2012 was sent to Petitioner. She sought reconsideration, but the DDB

affirmed its original determination and forwarded the matter to the Division of Hearings and Appeals for a hearing.

4. Petitioner's Medicaid application is based on diagnoses which include scoliosis, chronic headaches, arthritis, hypertension, hearing loss in her right ear, heart disease with placement of a defibrillator and anxiety.

5. Petitioner is 38 years of age (DOB 8/26/1974). She has graduated high school and has an associate degree from Gateway Technical College.

6. Petitioner works on a part-time basis as a home aide. She works in the morning for one and a half to two and a half hours, in the evening for an hour, and on the weekend for three hours. Her duties include light cleaning, cooking and assisting her elderly clients with their daily care. She does not do any heavy lifting and she is allowed to sit down on a needed basis. She works 20-22 hours per pay period and earns $10 per hour.

7. Petitioner has not applied for Social Security benefits.

DISCUSSION

A person between ages 18 and 65, with no minor children, must be blind or disabled to be eligible for MA. A finding of disability must be in accordance with Federal Social Security/SSI standards. *See Wis. Stats. §49.47(4)(a)4*. Because the standards are the same, a finding of no disability for Social Security/SSI purposes made within 12 months of the MA application is binding on a State Medicaid (MA) agency. Per the DDB there is no binding Social Security finding here so the Division of Hearings and Appeals must decide whether Petitioner is disabled as that term is used by in the Federal Social Security/SSI standards, i.e., must proceed to make a determination as to whether the Petitioner is disabled under the regulations governing the SSA and MA programs as to disability.

As noted above, a person between ages 18 and 65, with no minor children, must be blind or disabled to be eligible for MA. In order to be eligible for Medicaid as a disabled person, an applicant must meet the same tests for disability as those used by the Social Security Administration to determine disability for Supplemental Security Income (Title XVI benefits). *§ 49.47(4)(a)4., Wis. Stats*. Title XVI of the Social Security Act defines "disability" as the inability to engage in any substantial gainful activity due to physical or mental impairments which can be expected to either result in death or last for a continuous period of not less than 12 months.

Under the regulations established to interpret Title XVI, a claimant's disability must meet the 12-month durational requirement before being found disabling. In addition, the disability must pass five sequential tests established in the Social Security Administration regulations. Those tests are as follows:

1. An individual who is working and engaging in substantial gainful activity will not be found to be disabled regardless of medical findings. *20 CFR 416.920*.

2. An individual who does not have a "severe impairment" will not be found to be disabled. *20 CFR 416.920(c)*. A condition is not severe if it does not significantly limit physical or mental ability to do basic work. *20 CFR 416.921(a)*.

3. If an individual is not working and is suffering from a severe impairment which meets the duration requirement and meets or equals a listed

impairment in Appendix I of the federal regulations, a finding of disabled will be made without consideration of vocational factors (age, education, and work experience.) *20 CFR 416.920(d).*

4. If an individual is capable of performing work he or she has done in the past, a finding of not disabled must be made. *20 CFR 416.920(f).*

5. If an individual's impairment is so severe as to preclude the performance of past work, other factors, including age, education, past work experience and residual function capacity must be considered to determine if other types of work the individual has not performed in the past can be performed. *20 CFR 416.920(f).*

These tests are sequential. If it is determined that an applicant for MA is employed or does not suffer from a severe impairment it is not necessary to proceed to analyze the next test in the above sequence. If a person's condition does not meet the SSA listings an analysis of capability to perform past work must be made. If the individual cannot perform past work a determination of the residual functioning capacity to perform other work must be made. *20 CFR 416.920(a).*

Although the determination of disability depends upon medical evidence, it is not a medical conclusion; it is a legal conclusion. Thus, the observations, diagnoses, and test results reported by the Petitioner's physicians are relevant evidence; however the opinions of the doctors as to whether the Petitioner is disabled are not relevant. The definitions of disability in the regulations governing MA, Supplemental Security Income (SSI), and Social Security Disability Insurance (SSDI) programs require more than mere medical opinions that a person is disabled in order to be eligible. There must be medical evidence that impairment exists, that it affects basic work activities, that it is severe, and that it will last 12 months or longer as a severe impairment.

Here the Petitioner is working but her earnings are below the substantial gainful activity level. The DDB found that she does have a severe impairment.

The next question is whether any of the Petitioner's conditions meet the Listings. The listings for are found at *20 CFR Pt. 404, Subpt. P, Appendix 1, Part A, §§ 1.00 to 14.00.* The Petitioner reports a myriad of medical maladies as noted at Finding # 4. The parties agree that none of Petitioner's medical problems meet a listing.

The next question would then become whether the Petitioner has the residual functional capacity to perform past work. Past work includes any work done in the 15 years prior to application. *20 CFR 414.960(b)(1).* The DDB analysis concludes that Petitioner does not have the ability to perform past work.

This brings the analysis to the final step, a determination as to whether impairments coupled with her age, education, past work experience and residual function capacity preclude her from doing other work. There is not much question in my mind that Petitioner will ultimately be found disabled; it is, rather, a question of when that will be and whether that when is now.

The DDB concluded that Petitioner is capable of limited to sedentary work under rule 201.28. (See 20 C.F.R. Pt. 404 Subpt. P, App. 2, Rules 201.01-29). Sedentary work is defined in the disability regulations as follows:

> ...lifting no more than 10 pounds at a time and occasionally lifting or carrying articles like docket files, ledgers, and small tools. Although a sedentary job is defined as one which involves sitting, a certain amount of walking and standing

> is often necessary in carrying out job duties. Jobs are sedentary if walking and standing are required occasionally and other sedentary criteria are met.
> *20 C.F.R. §404.1567(a).*

Petitioner's testimony and the evidnce for her medical record is that her condition has gotten progressively worse over the last four years. Her consultative examination found that she cannot stand for more than 30 minutes nor sit for more than 45 minutes and that is with lumbar support. Further, Petitioner " …works in the morning for one and a half to two and a half hours, in the evening for an hour, and on the weekend for three hours. Her duties include light cleaning, cooking and assisting her elderly clients with their daily care. She does not do any heavy lifting and she stated that she is allowed to sit down on a needed basis. Ms. Bingen testified that she is in pain and exhausted after working. She stated that she takes muscle relaxers at least twice a day and naps every day. She can care for her own personal needs but needs assistance with household chores." *See written argument of Petitioner's attorney, dated September 24, 2012 at pages 4-5.*

Petitioner's testimony is supported by the report for a physician to whom the DDB s ent Petitioner for a consultative exam. *See report of Dr. KR of March 1, 2012.* As that report states, in its conclusion at page 3:

> This is a pleasant 37-year-old woman with congenital scoliosis that has been progressive. This will likely continue to be a degenerative process and will be a significant cause of musculoskeletal discomfort and with the need to control the pain and tension by use of muscle relaxers which she currently is using at this time. Non-steroidal anti-inflammatory medications have not caused any gastrointestinal disturbance at this time, however there is a protrusion upon the GI system by the abnormality of her frame. I would recommend that she not exceed tolerances that she has described of not standing longer than 30 minutes. She states that she is able to sit for up to 45 minutes if she has lumbar support. Walking is not a difficult problem for her, however the pace will differ upon the severity of the pain that she experiences that day. Lifting is continually a problem wherein that she maxes her lifting capacity as a laundry basket.... [in original] The primary problem of the headaches likely is associated with the strain of the cervical spine and the malalignment of the spine that is treated by the ibuprofen.

I am, therefore, concluding that Petitioner does not have rthe residual functional capacity to perform even sedentary work and is disabled.

CONCLUSIONS OF LAW

That the available evidence does demonstrate that Petitioner meets the criteria necessary for a finding that she is disabled as that term is defined by Social Security regulation.

THEREFORE, it is **ORDERED**

That this matter is remanded to the county agency with instructions to continue processing Petitioner's request for medical assistance and find him eligible retroactive to October 10, 2010, for all periods in which he meets the program's financial conditions. The agency shall assume that she has been disabled since October 10, 2010.

REQUEST FOR A REHEARING

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found at your local library or courthouse.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be served and filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

For purposes of appeal to circuit court, the Respondent in this matter is the Department of Health Services. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 1 West Wilson Street, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Milwaukee,
Wisconsin, this 3rd day of December, 2012

_____

\sDavid D. Fleming
Administrative Law Judge
Division of Hearings and Appeals

State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on December 3, 2012.

Racine County Department of Human Services
Disability Determination Bureau